him under the will of Annie E. Hurst, deceased, and for this reason he submits the matter should only be disposed of after oral argument before this Honorable Court. The evidence in the record of this case clearly shows the will of Annie E. Hurst, deceased, was only made by her after careful investigation by her of her assets and what she had to dispose of; that she had gone over the same not only with the petitioner but also with a public accountant, Horace S. Rhoads, as to what she owned and what she would probably have to live upon.

The Trial Court and State Appellate Court put great emphasis upon the testimony of the contestants' witnesses (neighbors of the decedent) as to decedent's bodily infirmities and her weakened mentality.

Mrs. McGuigan, one of the attesting witnesses, testified she had seen Mrs. Hurst come to Mr. Alker's office in 1948 (Mrs. Hurst signed her will December 2, 1949) (N. T. 543 (a)).

Mrs. Pandolfi, the other attesting witness testified (N. T. 279a) that Mrs. Hurst was Mr. Alker's personal friend.

Petitioner testified as to his closeness to the decedent, her son, and sister, and was, indeed, their family lawyer.

Mrs. Hurst's neighbors, Mrs. Snyder, her daughter, Dora Coleman, and Mr. Antonelli, all testified as to decedent's poor mental condition, but also to her strong physical condition. They all admitted that they have been interviewed by the Pennsylvania State Escheat Department investigator, Joseph Panosetti, but were reluctant to expose their conversations with him.

On or about December 18, 1962, this same person, Joseph Panosetti, after an investigation by a Deputy State Attorney General, was indicted in the Philadelphia Criminal Courts for conspiring in a fraudulent scheme to obtain the $69,000 estate of a decedent. Panosetti had been arrested and indicted on charges of forging the man's will and setting up a false heir.

Your petitioner believes and claims that to allow the lower Courts' findings to stand as they are is a great injustice to him and the decedent, and a violation of their constitutional rights as to due process and equal protection of the law.

Petitioner believes that he has substantial grounds to present (not previously presented) at a new hearing before the Orphans' Court. He would call said Joseph Panosetti, the Escheat investigator, and elicit from him evidence as to the influencing by him of decedent's neighbors who testified as to Mrs. Hurst's poor mental condition. As shown above, this man has been discredited in the public eye and could very easily have harmed petitioner in his interviews with said witnesses. This examination may in turn necessitate a further cross-examination of said witnesses.

Petitioner is advised, believes and therefore avers that the Supreme Court of Pennsylvania, in this case below, has so gravely erred in applying its own case-law to this Annie Hurst will as *effectually to deprive* your petitioner, Alker, of his property *without due process of law*. The Supreme Court of Pennsylvania, *although upholding the validity* of this Annie Hurst will (and thereby necessarily determining that she was of sound, disposing mind, memory, and understanding) nevertheless vitiated her bequest to the petitioner upon the specious finding of an alleged "undue influence," merely because petitioner was her attorney, as well as the attorney for her deceased son, Winfred, and drafted her will.

Pennsylvania has often decided that "*the mere fact* that the beneficiary of the will stood in a *confidential relationship* toward the testator, or that he is a stranger to his blood, *is insufficient* to raise a presumption of undue influence, and the burden of establishing such element rests on the contestant of the probate."

McCorkon v. Fraser, 327 Pa. 561 (1937), 192 A. 674;

Phillips' Estate, 244 Pa. 35 (1914) 90 Atl. 457;
Ash's Will, 351 Pa. 317 (1945) 41 A. 2d 620;
57 Am. Jur. 280, Wills, sec. 389 & 154 ALR 584.

As late as *Paul Will*, 407 Pa. 30 (1962) in *refusing* to find "undue influence" allegedly exercised by a testatrix's lawyer, one John McCreight, the same Pennsylvania Supreme Court reiterated, at page 36 thereof:

> "This Court has repeatedly defined undue influence sufficient to void a will. There must be imprisonment of the body or mind, frauds or threats, or misrepresentations, or circumstances of inordinate flattery, or physical or mental coercion to such a degree as to prejudice the mind of the testator, or destroy his free agency, or to operate as a present restraint upon him in the making of the will."

The *record* below *will be scrutinized in vain* for the presence or evidence of any of these things in this case.

Moreover, the Pennsylvania rule has always been that "the *mere fact* that the *testator* was *aged, infirm*, or *otherwise so physically or mentally weak* as to be peculiarly susceptible to undue influence, without more, *is insufficient to raise any presumption or inference of undue influence*, and the burden of proving the existence of this element rests on the party seeking to contest probate on this ground."

Morish's Estate, 156 Super. 394 (1945) 40 A. 2d 907;
Boyd's Estate, 168 Super. 182 (1951) 77 A. 2d 662;
57 Am. Jur. 285, Wills, secs. 396-97.

Despite these repeated pronouncements, the learned Supreme Court of Pennsylvania below, contrary to the law so stated as above in many cases, erroneously assumed a presumption of "undue influence" over Annie Hurst by

her attorney, Alker, your petitioner, erroneously placed the burden of disproof thereof on your petitioner, and, although sustaining this Will in all other respects, deliberately deprived Alker of that which was left to him by the Will.

Such a result in this case could have been reached on the evidence in this record in no way other than by a personal prejudice and the partiality of the members of the Court below engendered by the petitioner's irrelevant tax difficulties in other cases.

Furthermore, the record herein shows that testatrix made her said Will on December 2, *1949*, and she did not die until January 19, *1958*, more than 8 years and 1 month thereafter. During all that time she had ample opportunity to change her Will, had she ever decided so to do, separate and apart from any influence or even the presence of your petitioner. She did not do so, but elected to let the Will remain as originally drawn. Hence, the evidence of non-judicial partiality and prejudice in the learned Courts below, based on extraneous and unrelated matters, would seem to be abundantly clear in this case, — enough, surely, to warrant this honorable Court's review by certiorari for a deprivation of property without due process of law.

Your petitioner respectfully submits that the Court should therefore give him a new hearing in this matter, and after said hearing, return the case to the Trial Court below for further hearing as requested.

Respectfully submitted,

HARRY J. ALKER, JR.,
Harry J. Alker, Jr.,
Petitioner.

JAMES J. REGAN, JR.,
Attorney for Petitioner.